

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

MELISSA CLUTTER-JOHNSON,

Plaintiff,

v.

Civil Action No. 1:16-04041

UNITED STATES OF AMERICA,

Defendant.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is plaintiff's motion to file a surreply to the government's reply. (Doc. No. 9). The court questioned the timeliness of the government's reply at the hearing held on defendant's motion to dismiss or, in the alternative, for summary judgment. Counsel for the government stated at that time that the reply brief was timely, even though it was filed ten days after plaintiff's response, rather than seven as outlined in the Local Rules.

The court finds that the government's reply was timely filed. Federal Rule of Civil Procedure 6(d) provides an additional three days for mailing of memoranda, even when service is made electronically. See M. Shanken Commc'ns v. Variant Events, LLC, Action No. 3:10-CV-804, 2011 WL 2078007, at \*3 (E.D. Va. May 25, 2011) ("Local Civil Rule 7(F)(1) provides a party opposing a motion must file a responsive brief within eleven days of service. The Federal Rules of Civil Procedure

add three days to the eleven day period for documents filed electronically."); Chamblee v. Old Dominion Sec. Co., LLC, Civil Action No 3:13cv820, 2014 WL 1415095, at \*2 (E.D. Va. Apr. 11, 2014) ("For documents filed in the Electronic Case Filing system, parties receive three additional days to file responsive briefs.") (citing Fed. R. Civ. P. 6(d) & 5(d)(3)). Local Rule of Civil Procedure 7.1(a)(7) sets a seven day deadline to file all reply memoranda and, with the additional three mailing days provided by Rule 6(d), the government had until July 22, 2016 to file its reply, a deadline which the government met.

Having reviewed the arguments made by the government in its reply, in conjunction with those arguments made by both parties at the court's hearing on the government's motion, the court has determined that an additional filing by the plaintiff responding to the government's reply would aid the resolution of this matter. Accordingly, plaintiff's motion to file a surreply, (Doc. No. 9), is **GRANTED**. Plaintiff must file her surreply on or before **August 11, 2016**.

The Clerk is directed to send forthwith a copy of this Order to all counsel of record and to any unrepresented party.

**IT IS SO ORDERED** this 4th day of August, 2016.

ENTER:

David A. Faber

David A. Faber  
Senior United States District Judge